IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.M. No.19075-M of 2006

Date of Decision: 24.7.2007

The Chandigarh Saravhitkari Coop. House Building First Society Ltd. ....Petitioner.

Versus

The Joint Registrar, Cooperative Societies, UT, Chandigarh. ...Respondents.

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Present:- Mr.J.S.Thind, Advocate
for the petitioner.

Mr. Gautam Dutt, Advocate
for respondent No.1.

Mr. Harsh Aggarwal, Advocate
for respondents No.2 to 5.

S.S.SARON, J.(ORAL)

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This petition under Section 482 Cr.P.C. has been filed for directing respondent No.1 to decide the application which was filed for taking action against respondents No.2 to 5 who are ex-office bearers of the petitioner's society. The application was regarding embezzlement of society funds and irregularities and illegalities committed by respondents No.2 to 5 with respect to construction of dwelling units of the Chandigarh Saravhitkari Cooperartive House Building Society, Sector 48A, Chandigarh (`Society' for short).

Learned counsel for the petitioner submits that the petitioner has submitted a representation dated 9.1.2006 (Annexure P9) for seeking sanction for registration of FIR against ex-office bearers i.e. respondents

No.2 to 5 regarding embezzlement of the Society funds and various irregularities and illegalities committed by them with respect to construction of dwelling units of the Society. It is submitted that the prosecution cannot be launched by the petitioner against respondents No.2 to 5 without the previous sanction of the Registrar which is required in terms of Section 72 (2) of the Punjab Cooperative Society Act, 1961 (`Act' for short). The said provision, it is stated is applicable to the Union Territory, Chandigarh. Even otherwise, it is submitted that the consideration of the representation (Annexure P9) vide memo dated 5.4.2007 (Annexure R1) is cryptic and is not by a speaking order. Besides no decision has been taken with regard to the grant or rejection of the sanction for prosecution that was sought.

Learned counsel appearing for respondent No.1 has submitted that the representation (Annexure P9) of the petitioner has been considered point by point and every point has been discussed in the memo dated 5.4.2007 (Annexure R1). It is further submitted that the petitioner has not indicated as to under what provision of the Act does he intend to prosecute respondents No.2 to 5. In case the petitioner is to prosecute the respondents No.2 to 5 in respect of the offences under the Indian Penal Code relating to embezzlement of funds, then sanction of the Registrar Cooperative Society is not required as Section 72(2) of the Act provides for grant of sanction only with respect to the offences under the Act.

Learned counsel appearing for respondents No.2 to 5 has submitted that the allegations in the representation (Annexure P9) relate to the year 1995-2000. It is submitted that respondent No.5 was not

associated with the Managing Committee of the Society at the relevant time. It is further submitted that the petitioner earlier filed Crl. Misc. No.16419-M of 2006 praying for issuance of directions to respondents No.1 to 3 in the said Criminal miscellaneous petition to register FIR against respondents No.4 to 7. This Court vide order dated 21.3.2006 (Annexure R2/1) disposed of the said petition by observing that the petitioner may pursue his complaint before respondent No.1., It was however observed that no directions could be issued for registering a case. Therefore it is submitted that the petition is liable to be dismissed.

I have given my thoughtful consideration to the contentions raised by learned counsel for the respective parties and also perused the record. The prayer that was made by the petitioner was for disposing of the representation dated 9.1.2006 (Annexure P9) regarding taking of action against respondent No.2 to 5. The said representation has been disposed of by respondent No.1 vide memo dated 5.4.2007 (Annexure R1). The recommendations of the Inspector Grade I, Audit Co-operative Society, UT, Chandigarh, it is submitted by Mr. Gautam, Advocate, have been sent to the Society for necessary implementation. The grievance of the petitioner is that the same has not been disposed of by a speaking order. In case the petitioner is aggrieved against the order that has been passed disposing of the representation or in the decision making process of the consideration of the representation (Annexure P9) he has his remedies for assailing the same in accordance with law either before the higher forum by way of appeal or revision or seeking judicial review of the same. The representation

(Annexure P-9) has been disposed of. This Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. is not to go into the veracity of facts and embark upon an inquiry as regard the manner of the consideration of the representation (Annexure P9).

The contention of learned counsel for the petitioner that sanction for prosecution is required for lodging the criminal prosecution is without basis. Section 72(2) of the Act enjoins that no prosecution shall be instituted under the Act without the previous sanction of the Registrar. Learned counsel for the petitioner has not been able to indicate as to under which provision of the Act does he intend to seek the prosecution of respondents No.2 to 5, which may require the previous sanction of the Registrar. In case the petitioner seeks to prosecute the respondents No.2 to 5 with respect to the embezzlement that would fall under the provisions of Indian Penal Code for which sanction of the Registrar may not be required.

In the afore noticed circumstances it may be noticed that the petitioner has other remedies of assailing the memo dated 5.4.2007 (Annexure R1) disposing of the representation (Annexure P9) of the petitioner.

In the circumstances, necessary relief which has been claimed by the petitioner has been granted and therefore, the present petition is liable to be dismissed and is accordingly dismissed.

(S.S.SARON)
JUDGE

July 24, 2007.
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